

Where a written notice of the taking of testimony under this section on Monday is given on the Saturday before, but in such notice the case is wrongly entitled, and it appears that the attorney for the opposite party knew "inferentially" what case was referred to and was informed of the witnesses to be examined and signified his intention to be present, the notice was held sufficient. *Matthews v. Dare*, 20 Md. 266.

This section does not confer upon a commission appointed for the circuit court for Harford county the power to take depositions in the city of Baltimore. (See section 31.) Object of this and the following sections. *Brandt v. Mickle*, 28 Md. 446.

See notes to sec. 21.

As to witnesses and testimony in equity, see art. 16. sec. 252, *et seq.*

As to the issue by the clerk of commissions to take testimony, see art. 17, sec. 33.

As to depositions of masters of vessels and other transient persons, see art. 84, sec. 9.

1904, art. 35, sec. 20. 1888, art. 35, sec. 18. 1860, art. 37, sec. 17.  
1828, ch. 165, sec. 5.

**20.** Every commissioner so appointed, before he proceeds to act as such, shall take an oath before some judge or justice "that he will faithfully and impartially execute the duties of commissioner aforesaid, according to the best of his judgment;" a certificate of which oath shall be recorded among the records of the court by which such commissioner is appointed.

Where an oath is administered in open court before the clerk, it is in contemplation of law taken before the judge. The filing of the certificate of qualification by the clerk is a recording of it within the meaning of this section; the failure to record the certificate, however, would not impair the qualification of the commissioner. *Quynn v. Carroll*, 22 Md. 293.

*Ibid.* sec. 21. 1888, art. 35, sec. 19. 1860, art. 37, sec. 18.  
1828, ch. 165, sec. 2.

**21.** Either party in any action depending in said courts, after due notice to the other party or his attorney, agreeably to such rule as shall be made by the said courts, respectively, may take the deposition of any witness before any of the said commissioners, to be used as testimony on the trial of such action, in case only of the death of such witness, or on proof to the satisfaction of the court of the inability of the party to procure the attendance of such witness at the time of trial and the probable continuance of said inability until and at the next term, before the court shall permit such testimony to be used; and the opposite party shall be entitled to cross-examine any witness whose deposition shall be so taken, or to examine him or her on notice, before the same or any other commissioner.

Where testimony is taken under this section but the witness testifies at the trial, the depositions no longer have any validity and can not be used upon a second trial in case the witness is not present. Purpose of this section; this section contrasted with section 16. *Consolidated Ry. Co. v. O'Dea*, 91 Md. 512. And see *Darnell v. Goodwin*, 1 H. & J. 282.

Where a rule of court passed in conformity with this section provides that "reasonable notice" of the taking of testimony shall be given and such notice is given, the fact that the rule does not prescribe a definite notice is not material. A defect in the notice is waived if the opposing counsel appears and cross-examines the witnesses. *Waters v. Waters*, 35 Md. 546; *Williams v. Banks*, 5 Md. 200. *Cf. Brandt v. Mickle*, 28 Md. 447.